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**DEC 11 2002**

**OFFICE OF PETITIONS**

In re Application of  
Parker et al.  
Application No. 10/033,813  
Filed: December 20, 2001  
Attorney Docket No. 1793(15811)

**ON PETITION**

This is a decision on the petition filed March 20, 2002,<sup>1</sup> to accord the above-identified application a filing date of December 20, 2001, instead of January 3, 2002.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Since a copy of an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS. Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Petitioner has presented the result of a search of an USPS database. The search result indicate the package was enroute on December 20, 2001. Therefore, the petition is **granted**. In the future, petitioner should take steps to receive an express mail label with a clear date-in, and not rely solely on possible database results.<sup>2</sup> If the Office receives a label with an omitted or illegible date-in, the Office will give the application a filing date of the date the package is received, unless a petition is filed. A petition involves additional work by petitioner and the Office, and also delays prosecution of the application into a patent.

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<sup>1</sup> The original petition cannot be located in the file of application no. 10/033,813. Therefore, this decision is based on the copy of the petition supplied on December 3, 2002.

<sup>2</sup> Paragraph (b) of 37 CFR 1.10 provides,

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

Since relief has been granted under 37 CFR 1.10, the petition fee of \$130 will be credited to petitioner's deposit account.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of December 20, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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